



FACT SHEET ON DISQUALIFICATION FROM MUNICIPAL DECISIONS PART 2: INTERESTS IN REAL PROPERTY

The City's Ethics Ordinance includes laws that prohibit City Officials from influencing municipal decisions if it is reasonably foreseeable that the decisions will have a material financial effect on their economic interests. This fact sheet is one of a series of fact sheets designed to offer general conflict of interest guidance to City Officials who participate in making municipal decisions. This particular fact sheet is focused on conflicts that stem from financial interests in real property. Keep in mind that the information offered in this fact sheet should not be considered a substitute for the actual language contained in local and state law.

GENERAL RULES

- ❖ The Ethics Ordinance prohibits City Officials from participating in a municipal decision if it is reasonably foreseeable (i.e., a realistic possibility) that the decision will have a “material financial effect” on any real property in which they, or a member of their immediate families, have an interest worth \$2,000 or more.
- ❖ Note that in some cases, as discussed in greater detail below, an official may participate in a municipal decision notwithstanding its financial effect on his or her property so long as the decision's effect on the property is indistinguishable from its effect on the public generally.
- ❖ The term “immediate family” means an official's spouse (or registered domestic partner) and any dependent children.
- ❖ You must consider your spouse's investments and interests in real property for disqualification purposes even if you have an agreement (such as a pre-nuptial agreement) stating that you have no legal interest in his or her real property.
- ❖ This rule also applies to leasehold interests in real property. In other words, even if you don't own a parcel of real property, you may still be disqualified from participating in a municipal decision if you or a member of your immediate family pays \$2,000 or more per year to lease residential or business property involved in the decision.
- ❖ Under this rule, for example, a City Official who owns or leases a house next door to a site under consideration for a new sewer pump station may not participate in a municipal decision regarding placing the pump station on that site. Similarly, a City Official may be precluded from participating in a decision to modify an assessment imposed on his or her real property.
- ❖ Even though you needn't disclose your personal residence on your Statement of Economic Interests (Form 700), you should know that your ownership or leasehold interest in such property may still cause you to be disqualified from participating in a municipal decision.

MATERIALITY – OTHER THAN LEASEHOLD INTERESTS

- ❖ The financial effect of a municipal decision on real property in which an official has an interest (other than a leasehold interest) is “material” whenever the decision:
- (1) involves the adoption of or amendment to a general plan (except as provided below) or specific plan, and the parcel is located within the proposed boundaries of the plan;
 - (2) determines the parcel's zoning or rezoning (other than a zoning decision applicable to all properties designated in that category), annexation or de-annexation, or inclusion in or exclusion from any city, county, district, or other local government subdivision, or other boundaries (other than boundaries for elective purposes);
 - (3) would impose, repeal, or modify any taxes, fees, or assessments that apply to the parcel;
 - (4) authorizes the sale, purchase, or lease of the parcel;
 - (5) involves the issuance, denial, or revocation of a license, permit, or other land use entitlement authorizing a specific use of or improvement to the parcel or any variance that changes the permitted use of, or restrictions placed on, that real property (except that if the decision involves a license or permit issued to the official’s business entity, refer instead to the Fact Sheet On Disqualification From Municipal Decisions: Business Entities).
 - (6) involves construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the parcel in which the official has an interest will receive new or improved services that are distinguishable from improvements and services that are provided to or received by other similarly situated properties in the official's jurisdiction or where the official will otherwise receive a disproportionate benefit or detriment by the decision;
 - (7) would change the development potential of the parcel of real property;
 - (8) would change the income producing potential of the parcel of real property (except that if the parcel contains a business entity and the nature of the business entity will remain unchanged, refer instead to the Fact Sheet On Disqualification From Municipal Decisions: Business Entities; note that the term “business entity” includes rental properties).
 - (9) would change the highest and best use of the parcel of real property in which the official has a financial interest;
 - (10) would change the character of the parcel of real property by substantially altering traffic levels or intensity of use, including parking, of property surrounding the official's real property parcel, the view, privacy, noise levels, or air quality, including odors, or any other factors that would affect the market value of the real property parcel in which the official has a financial interest;
 - (11) would affect the value of real property located within 500 feet of the property line of the official's real property (except that commercial property containing a business entity is analyzed as a business interest rather than a real property interest; refer instead to the Fact Sheet On Disqualification From Municipal Decisions: Business Entities).

- (12) would cause a reasonably prudent person, using due care and consideration under the circumstances, to believe that the governmental decision was of such a nature that its reasonably foreseeable effect would influence the market value of the official's property.

❖ With regard to the 500-foot rule (#11, above):

- ✓ real property in which an official has a financial interest does not include common areas that are part of a common interest development (e.g., an area maintained by a homeowners association);
- ✓ an official may ask the Fair Political Practices Commission to make a written determination that, based on the relevant facts, a particular decision will not have a reasonably foreseeable impact on the official's property. An official receiving such a determination may participate in the decision notwithstanding the 500-foot rule.

MATERIALITY – LEASEHOLD INTERESTS

❖ The financial effect of a municipal decision on real property in which an official has a leasehold interest is “material” whenever the decision will:

- (1) change the termination date of the lease;
- (2) increase or decrease the potential rental value of the property;
- (3) increase or decrease the rental value of the property if the official has a right to sublease the property;
- (4) change the official's actual or legally allowable use of the real property;
- (5) impact the official's use and enjoyment of the real property.

EXCEPTIONS

❖ The financial effect of a municipal decision on real property in which an official has an interest is not “material” whenever the decision:

- (1) solely concerns repairs, replacement or maintenance of existing streets, water, sewer, storm drainage or similar facilities; or,
- (2) solely concerns the adoption or amendment of a general plan and all of the following apply:
 - (A) The decision only identifies planning objectives or is otherwise exclusively one of policy (and the decision is not initiated by the official, by a person that is a financial interest to the official, or by a person representing either the official or a financial interest to the official).
 - (B) The decision requires a further decision by the official's agency before implementing the planning or policy objectives, such as permitting, licensing, rezoning, or the approval of, or change to, a zoning variance, land use ordinance, or specific plan or its equivalent.

- (C) The decision does not concern an identifiable parcel or parcels or development project.
- (D) The decision does not concern the agency's prior, concurrent, or subsequent approval of, or change to, a permit, license, zoning designation, zoning variance, land use ordinance, or specific plan or its equivalent.

INSIGNIFICANT EFFECTS

- ❖ Notwithstanding the rules set forth above, there may be circumstances in which a municipal decision's financial impact is so minor that it does not rise to the level of being "material." In other words, a City Official does not have a disqualifying conflict of interest in a municipal decision if the financial effect of the decision is nominal or inconsequential.
- ❖ Although the materiality criteria set forth above typically involve significant financial impacts, it's possible that a decision will have virtually no financial impact on an official's real property. Please contact the Ethics Commission for additional guidance if you believe the impact of a decision on your real property will be insignificant.

PUBLIC GENERALLY

- ❖ Even if the financial effect of a municipal decision on your real property interest is material, you will not be disqualified from participating in that decision if you can establish that the financial effect on the property is indistinguishable from the financial effect on the public generally.
- ❖ A decision affecting your interest in real property is entitled to the "public generally" exception if the financial impact on the real property is essentially the same as it is on at least 25% of all real properties, commercial real properties, or residential real properties located in the City of San Diego.
- ❖ When determining whether a municipal decision's financial impact on your property is disproportionate to its impact on other properties in the City, consider these types of factors:
 - ✓ the property's development potential or use;
 - ✓ the property's income producing potential;
 - ✓ the proximity of the property to the project that is the subject of the municipal decision;
 - ✓ when you own multiple properties, whether the municipal decision's cumulative effect on your properties is greater than its effect on a single property; and,
 - ✓ when the decision imposes the same rate or percentage on all properties, whether you own a large property that will be financially impacted differently than a smaller property.
- ✓ In addition, the "public generally" exception will likely apply in the following special circumstances: (1) the imposition of taxes or assessments for water, utility, or other broadly provided public services applied equally or proportionally to everyone; (2) changes to parking rates, permits, and fees that apply to the entire City; (3) ordinances that restrict on-street parking, impose traffic controls, deter vagrancy, reduce nuisance, or improve public safety; (4) decisions that affect all renters of residential property; (5) situations in which the law requires a board or commission to contain appointees representing a particular trade or profession and there is no

unique effect on the appointee; and (6) states of emergency. Contact the Ethics Commission for assistance with these circumstances.

CONTRACTS

- ❖ If the municipal decision involves a contract, be sure you also review the Ethics Commission's "Fact Sheet on Financial Interests in a Contract."

Determining whether or not you have a conflict of interest in a particular municipal decision can be a complicated matter. Do not hesitate to contact the Ethics Commission at (619) 533-3476 for additional assistance.

Rev. 5/8/15